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Date 2-1-79

Surname [REDACTED]

OP:E:EO:T:2

NOV 9 1998

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code. We have determined that you do not qualify for exemption under that section of the Code. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted indicates that you were incorporated on [REDACTED]. Your Articles of Incorporation state that your purpose is to engaged in the following activities:

- (1) to design, develop, and implement testing standards and procedures for measuring the performance of [REDACTED] computer programs, and other computer programs as your Board of Directors might determine from time to time, and to organize and analyze the resulting data derived from such tests, and disseminate such data to your members or other interested persons, corporations, or entities as you deem appropriate;
- (2) to design, develop, and deliver courses of instruction on the proper use of evaluation tools and techniques developed by you or by other entities for use in measuring the performance of computer software programs as you deem appropriate;
- (3) to acquire the goodwill, rights, licenses, and property of any person, firm, or entity which you deem necessary to fulfill any of your goals or objectives, and to pay for the same in cash, bonds, property, or promissory notes;
- (4) to enter into partnerships, joint ventures, or collaboration with other entities or unincorporated

associations as you deem necessary to accomplish your goals or objectives; and

(5) in general, to do everything necessary, suitable, or proper to accomplish any purpose or attain any of your goals or objectives set forth above, either alone or in collaboration with any other corporations, organizations, firms, or individuals.

Your Articles state that your membership shall be comprised of companies, government agencies, and other organizations that share an interest in the performance of [REDACTED] computer programs as well as other computer programs that your Board of Directors might identify and agree on from time to time. Your Articles also state that your members shall be comprised of companies engaged in manufacturing network server hardware platforms that are candidates for hosting [REDACTED] computer programs; except for manufacturers and vendors of computer operating systems software, all other entities shall be eligible to become your associate members. Your Articles state that members shall be entitled to cast two votes on any matter that requires a vote of the membership, and that associate members shall have no vote.

Your bylaws state that your mission shall be (1) to collect, organize, package, publish, and disseminate information relating to the performance of computer programs, particularly [REDACTED], to your members, (2) to develop and deliver educational programs aimed at enhancing the knowledge of your members as your Board of Directors shall determine from time to time, and (3) to maintain databases, bulletin boards or other forms of electronic information systems to facilitate the exchange of information among your members.

In your application, you state that you were formed by the members companies to provide information, software, training and technical support about [REDACTED]. You state that your primary focus is to reduce expenses associated with internal benchmark activities, develop a basis of performance information, serve as an industry conduit for specifying future benchmarks, and ensure more rapid and optimized deployment of future [REDACTED]. You state that your plans call for four meetings of your members each year, one of which meetings is to provide feedback to [REDACTED] about the software it develops for [REDACTED] benchmark testing. You state, however, that your relationship with [REDACTED] is no different from your relationship with your other members, and that although [REDACTED] was your founding member, it enjoys no greater rights

[REDACTED]
or privileges than its fellow members; [REDACTED], like all of its fellow members, receives the performance data as posted on your web site as reference information disseminated to all your members.

You state that since your incorporation, you have provided technical support via telephone and through your internet world wide web site, which provides access to reference information and software updates related to [REDACTED] benchmark testing. You state that this web is maintained by you through [REDACTED], your administrative contractor. You state that [REDACTED], under contract with you, provides all of the administrative services you need to deliver your services. You state that [REDACTED] provides technical support to your members including (1) clarification of auditing and certification rules for [REDACTED] results, (2) how to set up a [REDACTED] testing environment, (3) how to run specific [REDACTED] workloads, and (4) provision of telephone and e-mail technical support to members to help troubleshoot errors reported by the [REDACTED].

With regard to your testing process for capacity planning and benchmarking, you state the following:

[REDACTED] benchmark testing software has a software license associated with it. Companies that wish to produce [REDACTED] information using the [REDACTED] must adhere to the license requirements. The license requires testing companies to have their test results and the reports that disclose testing results audited and certified before the results can be made public. Otherwise, the results can only be disclosed under nondisclosure agreements. The rules for auditing and certifying [REDACTED] test results were developed by and voted on by the [REDACTED] members. These rules for auditing and certifying [REDACTED] are extensive and are posted to [REDACTED] as reference information for all testing organizations. [REDACTED] produced by [REDACTED] members must conform to the [REDACTED] license agreement. Other than those [REDACTED] results, [REDACTED] members' products are not required to conform to any certified standards.

You also state that [REDACTED], [REDACTED], and [REDACTED] are registered trademarks of [REDACTED].

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for a profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Rev. Rul. 56-65, 1956-1 C.B. 199, holds that a local organization whose principal activity consists of furnishing particular information and specialized individual services to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses is performing particular services for individual persons. Such organization, therefore, is not entitled to exemption under section 501(c)(6) of the Code as a business league even though it performs functions which are of benefit to the particular industry and the public generally. The activities of the organization consisted of the maintenance of plan rooms for the convenience of members, where plans and specifications for local construction projects, together with the names of general contractors bidding on specific projects, are filed.

Rev. Rul. 66-338, 1966-2 C.B. 226, holds that an organization formed to promote the interest of a particular retail trade which advises its members in the operation of their individual businesses and sells supplies and equipment to them is not exempt under section 501(c)(6) of the Code. The revenue ruling states that by providing its members with an economy and convenience in the conduct of their individual businesses, the organization is performing particular services for individual persons as distinguished from activities aimed at the improvement of business conditions in their trade as a whole.

Rev. Rul. 68-264, 1968-1 C.B. 264, defines a particular service for the purposes of section 501(c)(6) of the Code as an activity that serves as a convenience or economy to the members of the organization in the operation of their own businesses.

Rev. Rul. 74-147, 1974-1 C.B. 136, holds that an organization whose members represent diversified businesses that own, rent, or lease one or more digital computers produced by various manufacturers, without regard to identity of the manufacturer of any such computer. The sole activity of the organization mentioned in the revenue ruling is the holding of semi-annual conferences, at which operational and technical problems relating to computer use are discussed. The revenue ruling concludes that the organization's primary objective, provision of a forum for the exchange of information which will lead to the more efficient utilization of computers by its members and other interested users, improves the overall efficiency of its members' business use of computers and qualifies for exemption under section 501(c)(6) of the Code.

Rev. Rul. 83-164, 1983-2 C.B. 95, describes an organization whose purpose is to conduct conferences for the dissemination of information concerning computers manufactured by one specific company, M. Although membership is comprised of various businesses that own, rent, or lease computers made by M, membership is open to businesses that use other brands of computers. At the conferences, presentations are given primarily by representatives of M, as well as by other experts in the computer field. Problems related to members' use of M's computers are also discussed and current information concerning M's products are also provided. The revenue ruling holds that by directing its activities to businesses that use computers made by one manufacturer, the organization is improving business conditions in a segment of a line of business rather than in an industry as a whole and is not exempt under section 501(c)(6) of the Code. The revenue concludes that by providing a focus on the products of one particular manufacturer, the organization is providing M with a competitive advantage at the expense of manufacturers of other computer brands.

In National Muffler Dealers Ass'n v. U.S., 440 U.S. 472 (1979), the Supreme Court held that an organization whose membership consisted of the franchisees of one brand of muffler did not constitute a line of business within the meaning of section 501(c)(6) of the Code because a single brand represented only a segment of an industry.

In National Prime Users Group, Inc. v. U.S., 667 F. Supp. 250 (D.C. Md. 1987), the Court held that an organization which

[REDACTED]

served the needs of users of a specific brand of computer promoted only a segment of a line of business and was not exempt under section 501(c)(6) of the Code.

In Guide International Corporation, v. U.S., 948 F. 2d 360 (7th Cir. 1991), aff'g No. 89-C-2345 (N.D. Ill. 1990), the Court concluded that an association of computers users did not qualify for exemption under section 501(c)(6) because it benefitted essentially users of IBM equipment.

The information you have submitted establishes that you are interested in establishing and improving the position in the market place of [REDACTED] both registered trademarks of [REDACTED]. As discussed by the courts in National Prime Users Group, Inc. v. U.S. and Guide International Corporation, v. U.S., both supra, promoting the needs of users of a specific type of computer program registered to a for-profit organization is not considered to be an exempt activity within the meaning of section 501(c)(6) of the Code. Further, by limiting your voting membership to organizations sharing an interest in [REDACTED] computer programs, you are not representing a line or lines of business as required under section 501(c)(6). As discussed by the Supreme Court in National Muffler Dealers Ass'n v. U.S., supra, your activities do not apply to a significant segment of your line of business. You are similar to the organization discussed in Rev. Rul. 83-164, supra, which was denied exemption under IRC 501(c)(6). You are not similar to the organization discussed in Rev. Rul. 74-147, supra, because the technical programs you discuss are limited to [REDACTED]

The key consideration is whether your activities give a competitive edge to your special programs as opposed to other computer program that perform similar types of functions and are in competition with your programs. [REDACTED] are only two programs among a number of others. You are disseminating practical and technical information about only these programs. It does not matter that your members are in competition with each other for a share of the market, or that your members are compatible, or that your program may be an open system. Therefore, we have concluded that you are not acting on behalf of a recognizable line of business within the intentment of section 501(c)(6).

In addition, by establishing a system whereby your members and others can have their product certified as meeting certain recognizable standards, you are providing a particular service to your members. You have established a vehicle which relieves them of the problems encountered in testing a program or a piece of

hardware for compatibility with a system. This is an economy or a convenience to them and, if a primary activity, would bar exemption under section 501(c)(6) of the Code. See Rev. Rul. 68-264, supra.

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(c)(6) of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your protest statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies of it will be forwarded to the Ohio key district office. Thereafter, any questions about your federal income tax status should be addressed to the Ohio EP/EO key district office. The mailing address for that office is: Internal Revenue Service, EP/EO Customer Service, P. O. Box 2508, Cincinnati, OH 45201.

When sending additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following address on the envelope:

Internal Revenue Service
OP:E:EO:T:2 Room 6539
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Sincerely yours,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

cc: [REDACTED]
[REDACTED]
[REDACTED]
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